

174 FERC ¶ 61,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Chairman;
Neil Chatterjee, Richard Glick,
Allison Clements, and Mark C. Christie.

Spire STL Pipeline LLC

Docket No. CP17-40-005

ORDER DISMISSING COMPLAINT

(Issued January 19, 2021)

1. On May 24, 2019, the Director of the Office of Energy Projects (OEP), through his designee, Chief of Gas Branch 4, Division of Gas — Environment and Engineering (Branch Chief), issued multiple letter orders addressing 33 filings received from 23 different landowners alleging that Spire STL Pipeline LLC (Spire) during construction of the Spire STL Pipeline Project (Spire Project) had violated certain environmental conditions of the Commission’s August 3, 2018 order issuing a certificate of public convenience and necessity (Certificate Order).¹ On July 3, 2019, Central Land Consulting, LLC (Central Land) filed a complaint under Rule 206 of the Commission’s Rules of Practice and Procedure (Rule 206),² asserting, among other things, that Spire and the Commission had failed to properly consider the landowners’ environmental non-compliance allegations as formal complaints under Rule 206.³ As discussed below, we dismiss Central Land’s complaint.

I. Background

2. On August 3, 2018, the Commission issued Spire a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA)⁴ and Part

¹ *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018) (Certificate Order), *order on reh’g*, 169 FERC ¶ 61,134 (2019) (Rehearing Order).

² 18 C.F.R. § 385.206 (2020).

³ *See* Central Land’s July 3, 2019 Complaint Requesting Fast Track Processing (July 3 Complaint).

⁴ 15 U.S.C. § 717f(c).

157 of the Commission's regulations⁵ to construct and operate the Spire Project, a 65-mile-long greenfield pipeline extending from an interconnection with Rockies Express Pipeline LLC in Scott County, Illinois, to interconnections with both Spire Missouri, Inc. and Enable Mississippi River Transmission, LLC, in St. Louis County, Missouri. Spire accepted its certificate on August 8, 2018, and commenced construction in November 2018. On November 14, 2019, the Director of the Division of Gas — Environment and Engineering (Division Director) granted Spire's request to place most of the project facilities into service.⁶

3. Central Land represents numerous landowners along the pipeline route and states that it "provides nonlegal consultation and construction monitoring regarding pipelines, easements and agreements."⁷ Between February and May 2019, 23 landowners⁸ filed a total of 33 pleadings styled as formal complaints under Rule 206, asserting that Spire had failed to comply with the environmental conditions of the Certificate Order.⁹

⁵ 18 C.F.R. pt. 157 (2020).

⁶ Division Director's November 14, 2019 Letter Authorizing Spire to Commence Service. On October 30, 2020, the Commission granted Spire's request to place into service the remaining project facilities. Division Director's October 30, 2020 Letter Authorizing Spire to Commence Service (granting in-service request regarding Chain of Rocks interconnect in St. Louis County, Missouri).

⁷ July 3, 2019 Complaint, Exhibit A – Part 2 (letter clarifying Central Land's consulting services).

⁸ William Ballard and Mark Ryan; Philip and Zena Brown; Michael Dahman; Kenneth Davis; Gregory Farm Trust; Hart Farms, LLC; Betty and Keith Jefferson; Forrest Neal Jones; Dannie Malone; Jo Ann Mansfield Trust No. 2014; Robert Parker; Neal Rothermich; Saale Family, LP; Sheila Segraves; Simon Farms LLC; Sinclair Family Farm, LCC; Greg and Connie Stout; Greg Steckel; Marc Steckel; C & J Steinhoff Properties LLC; TTE Land Trust; Gerald Turman; and Kenneth and Gayle Willis filed complaints during this time.

⁹ Between May 23 and 30, 2019, 10 of these landowners filed motions urging the Commission to find Spire in default and to admit as fact all allegations raised in their respective complaints because Spire's March 15, 2019 answer failed to comply with certain requirements of Rule 213 of the Commission's Rules of Practice and Procedure. *See, e.g.*, Forrest Neal Jones's May 23, 2019 Motion (citing 18 C.F.R. §§ 385.213(c)(2), (c)(4), and (e)(2020)). As discussed below, Rule 206's formal complaint requirements and the corresponding procedure for answers to complaints under Rule 213 did not apply to the landowner's allegations of environmental non-compliance.

4. On February 28, 2019, Spire filed an answer to 15 landowner complaints filed on February 8, 11, 12, and 13, 2019.¹⁰ Spire stated that its answer was filed pursuant to Rules 206 and 213 of the Commission's Rules of Practice and Procedure.¹¹ Spire responded substantively to claims regarding its compliance with certain provisions of the Agricultural Impact Mitigation Agreement (AIMA) between Spire and the Illinois Department of Agriculture.¹² Specifically, Spire asserted that, in accordance with the AIMA, it was appropriately communicating with landowners and had engaged in proper negotiations regarding timber removal and compensation, and the location of temporary access roads. As to two complainants' properties which Spire acknowledged had experienced limited instances of rutting and possible mixing of topsoil and subsoil, Spire stated that it had appropriately identified these non-compliance issues in its weekly construction status report,¹³ had coordinated with the Illinois Department of Agriculture on remediation efforts, and had resolved the issues within a week.¹⁴

5. By letter filed March 15, 2019, Spire responded to five landowner complaints subsequently filed on March 1, 5, and 8, 2019.¹⁵ Spire asserted that Commission staff should address the landowners' compliance as part of the Commission's post-certificate compliance process, rather than as formal complaints under Rule 206.¹⁶ Spire noted that its weekly construction reports showed that it had resolved most issues before any responsive pleadings would have been due in a formal complaint process under Rule 206.¹⁷ The company pledged to continue to work with landowners to promptly address

¹⁰ Spire's February 28, 2019 Answer (February 28 Answer).

¹¹ *Id.* (citing 18 C.F.R. §§ 385.206 (Complaints) and 385.213 (Answers)).

¹² *See* February 28 Answer at 3-4, 8-17. The AIMA establishes best management practices for construction and restoration on agricultural land in Illinois. *See* Commission staff's September 29, 2017 Environmental Assessment at Appendix D (Agricultural Impact Mitigation Agreement).

¹³ February 28 Answer at 18, n.15 (citing Spire's Weekly Report Nos. 24 (week of Feb. 3-9, 2019) and 25 (week of Feb. 10-16, 2019)).

¹⁴ *See id.* at 19.

¹⁵ Spire's March 15, 2019 Letter (noting that four of the five new complaints were filed by the same landowners that filed complaints in February 2019).

¹⁶ *Id.* at 1.

¹⁷ *Id.*

concerns and to continue to report these efforts in its weekly construction reports.¹⁸ However, Spire noted that it would “refrain from further submission of formal pleadings in response to landowner complaints unless and until the Commission issues a notice of the complaint or otherwise directs Spire to file a formal response.”¹⁹

6. On May 24, 2019, the Branch Chief issued 23 letters responding to the landowners’ various pleadings raising allegations of environmental non-compliance (May 24 Letter Orders).²⁰ The letters explained that matters concerning environmental non-compliance are investigated and addressed by Commission staff,²¹ and that the Certificate Order’s mandatory environmental conditions delegate to the Director of OEP, or the Director’s designee, the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project.²² Each letter also addressed the specific allegations of non-compliance raised by the landowner. No landowners sought rehearing of the Branch Chief’s May 24 Letter Orders.

¹⁸ *Id.*

¹⁹ *Id.* at 2.

²⁰ The May 24 Letter Orders responded to pleadings filed by: William Ballard and Mark Ryan; Philip and Zena Brown; Michael Dahman; Kenneth Davis; Gregory Farm Trust; Hart Farms, LLC; Betty and Keith Jefferson; Forrest Neal Jones; Dannie Malone; Jo Ann Mansfield Trust No. 2014; Robert Parker; Neal Rothermich; Saale Family, LP; Sheila Segraves; Simon Farms LLC; Sinclair Family Farm, LCC; Greg and Connie Stout; Greg Steckel; Marc Steckel; C & J Steinhoff Properties LLC; TTE Land Trust; Gerald Turman; and Kenneth and Gayle Willis.

²¹ *See, e.g.*, Commission staff’s May 24, 2019 Letter to Robert Parker at 1-2.

²² *Id.* (citing Certificate Order, 164 FERC ¶ 61,085 at Appendix, Environmental Condition 2).

7. On July 3, 2019, Central Land filed, on its own behalf,²³ a pleading styled as a formal complaint under Rule 206 (July 3 Complaint).²⁴ In its complaint, Central Land argues that: (1) Spire, by failing to respond to the landowners' prior Rule 206 complaints, defaulted under Rule 213 of the Commission's Rules of Practice and Procedure (Rule 213) and that the Commission permitted Spire's failure to answer; (2) Spire's environmental inspectors and the Commission staff's compliance monitors provided fraudulent information during inspections in order for the landowners' complaints to be dismissed; and (3) Spire violated the conditions of the Certificate Order, the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (FERC Plan) and *Wetland and Waterbody Construction and Mitigation Procedures* (FERC Procedures), and the Illinois Environmental Protection Act.

8. On July 23, 2019, Spire filed an answer to Central Land's July 3 Complaint.

²³ Central Land does not purport to be filing the complaint on behalf of any of the landowners that it provides consulting services for. On October 21, 2019, 29 landowners, represented by attorney Carolyn Elephant, jointly filed a pleading titled "Second Complaint of Impacted Spire Landowners" alleging that Spire was violating conditions of the Certificate Order and urging the Commission to initiate an enforcement action against Spire (October 21 Complaint). Twelve of these 29 landowners are the same landowners that Central Land provides consulting services for and who filed the complaints identified in Central Land's Exhibit F. The October 21 Complaint argued that the Commission did not adhere to the Rule 206 formal complaint procedures. On February 5, 2020, the same landowners submitted a letter withdrawing the October 21 Complaint, which became effective on February 20, 2020. February 21, 2020 Notice of Effectiveness of Withdrawal of Pleading.

²⁴ Central Land included as Exhibit F to its complaint, "[a]ll formal complaints submitted to FERC Docket No. [CP]17-40 after March 1, 2019 by Central Land Consulting, LLC as agent for Landowners in the State of Illinois." See July 3, 2019 Complaint, Exhibit F. Central Land does not legally represent those landowner complainants, rather Central Land submitted the complaints to the Commission "as a secretarial service." July 3, 2019 Complaint at 3. Central Land's Exhibit F includes complaints filed by 12 landowners: Kenneth Davis, William Ballard and Mark Ryan, Gregory Farm Trust, Forrest Neal Jones, Jo Ann Mansfield Trust No. 2014, Philip and Zena Brown, Michael Dahman, Marc Steckel, Dannie Malone, Betty and Keith Jefferson, Greg Steckel, and Gerald Turman. See July 3, 2019 Complaint, Exhibit F.

II. Discussion

A. Standing

9. As an initial matter, it does not appear that Central Land has standing to raise the issues in its complaint. Rule 206 provides that “any person may file a complaint . . . for any . . . alleged wrong over which the Commission may have jurisdiction.”²⁵ The Commission has consistently construed Rule 206 to permit any person, as defined in Rule 102(d) of the Commission’s procedural rules,²⁶ to file a complaint, so long as the person is adversely affected by the actions that are the subject of the complaint.²⁷ For example, in *Appalachian Power Co.*, the Commission found that an individual did not have standing to raise the issues in his complaint, which included claims that a hydroelectric project licensee was in violation of its license for: (1) not accurately disclosing its property interests in its application; (2) not obtaining all necessary property rights required by standard license Article 5; (3) failing to resolve property rights disputes with third-party non-licensees in state court; and (4) taking property from third-party non-licensees without compensation, where the complainant “in no way explains how he is affected by these matters.”²⁸

10. Similarly, in its complaint, Central Land makes general allegations that: (1) Spire and the Commission failed to treat the landowners’ pleadings as Rule 206 complaints; (2) Spire’s and the Commission’s environmental inspectors relied on inaccurate information in investigating the landowners’ complaints; and (3) Spire violated the Certificate Order, the FERC Plan and the FERC Procedures, and the Illinois Environmental Protection Act, but its attempts to explain how Central Land is affected by these matters fails.²⁹ Central Land does not claim to be representing any landowners with

²⁵ 18 C.F.R. § 385.206(a).

²⁶ 18 C.F.R. § 385.102(d) (2020).

²⁷ *Appalachian Power Co.*, 153 FERC ¶ 61,299, at P 15 (2015) (quoting *S. Union Gas Co. v. Northern Natural Gas Co.*, 71 FERC ¶ 61,198, at 61,717 (1995) (finding that Southern Union’s assertion of harm from Northern Natural’s reduction of the delivery pressure where Southern Union is the recipient of the gas being delivered by Northern but not a direct customer, is a sufficient basis to find standing)).

²⁸ *Appalachian Power Co.*, 153 FERC ¶ 61,299 at PP 9, 15.

²⁹ See July 3 Complaint at 5 (stating that the actions “affect me by causing multiple landowners that have hired my company as their consultant to see that the damages on their property raised in the previous complaints are true. Without the backing of the FERC and related agencies, these damages will go unsettled. . . .” and

respect to the issues raised in the July 3 Complaint, nor does Central Land own any property affected by the Spire Project. Where entities fail to demonstrate “a more than general interest” in the matters at hand, “they have no standing . . . because any injury to them is purely theoretical.”³⁰ Central Land has failed to establish standing, accordingly its complaint is dismissed.

B. Central Land’s Pleading is an Impermissible Collateral Attack

11. At bottom, Central Land in its July 3 Complaint argues that the Commission improperly deferred to Commission staff the landowners’ allegations of environmental non-compliance instead of treating the filings as formal complaints under Rule 206.³¹ And, by not filing formal answers to the landowners’ complaints in the manner prescribed by the Commission’s regulations, Central Land asserts that Spire violated Rule 213 and that the Commission, through its inaction, permitted this violation to occur.³²

12. Central Land’s lack of standing to raise these issues aside, objections to the Commission’s handling of the landowners’ allegations of non-compliance constitute a collateral attack on the Branch Chief’s May 24 Letter Orders, which became final when none of the complainants sought rehearing of them. Specifically, Central Land’s arguments regarding OEP’s treatment of landowner complaints, the sufficiency of Spire’s answer to those complaints, and the veracity of the information provided by inspectors in investigating the landowner complaints, amount to an attempt by Central Land to

“other nonfinancial impacts on me . . . are: I am highly concerned of the relationship between the FERC and Spire Energy . . . I am also concerned about FERC’s monitoring of Spire’s environmental procedures and regulations. The damage being done on multiple properties could very well have been avoided”).

³⁰ *Appalachian Power Co.*, 137 FERC ¶ 61,065 at P 17 (2011).

³¹ July 3 Complaint at 1-3.

³² *See id.*; *see also* 18 C.F.R. § 385.213(a) (2020) (“Any respondent to a complaint . . . must make an answer, unless the Commission orders otherwise.”). To the extent that Central Land’s July 3 complaint challenges the Commission’s actions, such a complaint does not lie. A complaint can only be against an entity subject to the Commission’s jurisdiction, not against the Commission itself. *Appalachian Power Co.*, 153 FERC ¶ 61,299 at P 21.

introduce new facts and arguments into the record, and is therefore an untimely, collateral attack on the May 24 Letter Orders.³³

13. Even if Central Land's July 3 Complaint was filed on behalf of any landowners, of which there is no evidence, we find that the July 3 pleading is in effect a statutorily-barred, late-filed request for rehearing of the Branch Chief's May 24 Letter Orders. In these letters, the Branch Chief addressed each landowner's specific compliance concerns and explained that the "provisions of Rule 206 do not apply where the certificate order specifically provides a process to address allegations of non-compliance [with] the environmental conditions."³⁴ Under section 19(a) of the NGA, an aggrieved party must file a request for rehearing within 30 days after the issuance of a Commission decision.³⁵ Neither the landowners nor Central Land on behalf of the landowners sought rehearing of the May 24 Letter Orders within 30 days of issuance of those orders. The July 3 Complaint was filed several days after the June 24, 2019 rehearing deadline had expired.³⁶ Therefore, any objections, even if asserted by the landowners themselves, to the Branch Chief's handling of the landowners' allegations of non-compliance constitute a collateral attack on the May 24 Letter Orders.³⁷

³³ See e.g., *Boyce Hydro Power, LLC*, 167 FERC ¶ 61,248, at P 7 (2019); *Tenn. Gas Pipeline Co., L.L.C.*, 162 FERC ¶ 61,013, at P 37 (2018).

³⁴ See, e.g., Branch Chief's May 24, 2019 Letter to Greg Steckel at 1, n.2.

³⁵ 15 U.S.C. § 717r(a) ("Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order"). The Commission has no discretion to extend this deadline. See, e.g., *Transcontinental Gas Pipe Line Co.*, 161 FERC ¶ 61,250, at P 10 n.13 (2017) (collecting cases).

³⁶ The Commission's Rules of Practice and Procedure provide that if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the filing deadline does not end until the close of business on the next business day. 18 C.F.R. § 385.2007(a)(2) (2020). Because the 30-day deadline fell on a Sunday (i.e., June 23, 2019), the filing deadline was extended until the close of business on Monday, June 24, 2019.

³⁷ See, e.g., *Constitution Pipeline Co., LLC*, 168 FERC ¶ 61,129, at P 15 (2019) (where party failed to file a rehearing request of the Commission's declaratory order determining whether a state agency waived its authority to act under the Clean Water Act, the party's subsequent challenge to the Commission's jurisdictional authority to determine waiver is barred as an untimely collateral attack on the declaratory order).

14. Based on the foregoing, Central Land's July 3 Complaint is rejected. However, we will nonetheless address each of Central Land's claims below.

C. Treatment of the Landowner Complaints

15. The Commission recently explained its procedure for handling allegations of environmental non-compliance arising during pipeline construction and right-of-way restoration activities.³⁸ We adopt that reasoning here. In *Mountain Valley* and *Midship*, we found that, due to the nature of compliance allegations concerning pipeline construction and right-of-way restoration, and the need to correct construction-related impacts as they arise to prevent or minimize environmental damage, the Certificate Order's referral of those matters to Commission staff is an appropriate alternative procedure.³⁹ The Rule 206 process, we explained, was not designed to timely and efficiently address allegations of non-compliance with pipeline construction and restoration conditions nor does it allow for the flexibility sometimes needed to ensure that corrective action is appropriately tailored to changing conditions in the field.⁴⁰

16. Here, as in *Mountain Valley* and *Midship*, the Commission appropriately referred to Commission staff the landowners' construction and restoration compliance allegations instead of using the Rule 206 process to address those matters. Accordingly, the procedural requirements for formal complaints under Rule 206 and for answers to complaints under Rule 213 were not applicable. As we previously explained, allegations of non-compliance handled first by Commission staff receive no less consideration than those that we take up ourselves, and in all instances the initial decision, whether by staff or by the Commission, is subject to rehearing by the Commission.⁴¹

D. Claims of Fraudulent Information

17. Central Land claims that Spire's environmental inspectors and Commission staff's compliance monitors provided fraudulent information subsequent to the dismissal of the

³⁸ See *Mountain Valley Pipeline, LLC*, 172 FERC ¶ 61,193, at PP 9-14 (2020) (*Mountain Valley*); see also *Midship Pipeline Company, LLC*, 173 FERC ¶ 61,075, at PP 11-16 (2020) (*Midship*).

³⁹ *Mountain Valley*, 172 FERC ¶ 61,193 at P 13; *Midship*, 173 FERC ¶ 61,075 at P 13.

⁴⁰ *Mountain Valley*, 172 FERC ¶ 61,193 at P 13; *Midship*, 173 FERC ¶ 61,075 at P 15.

⁴¹ *Mountain Valley*, 172 FERC ¶ 61,193 at P 14; *Midship*, 173 FERC ¶ 61,075 at P 21.

landowner's complaints. Central Land provides no substantial evidence for this assertion, noting only that weekly status reports prepared by Spire's environmental inspectors "found very little to no issue" with the areas referenced in the landowners' various pleadings raising allegations of non-compliance with the conditions of the Certificate Order.⁴² Likewise, Central Land takes issue with the inspections performed by Commission staff's compliance monitors because "only a limited number [of the landowners' complaints] ever resulted in a noncompliance and none of them were sent to enforcement."⁴³ Finally, Central Land argues that Spire falsified its weekly status reports by reporting at various times that it expected to soon receive a state water discharge permit when the Illinois Environmental Protection Agency (Illinois EPA) had determined that Spire had failed to obtain "a General Storm Water Permit for Construction Activities."⁴⁴

18. Spire disputes Central Land's allegation that it falsified weekly status reports. It explains that the state water discharge permit referenced in its weekly reports concerns permit authority for the discharge of hydrostatic test water, not stormwater discharge⁴⁵ and that it "has neither applied for nor stated that it applied for a stormwater discharge permit from the [Illinois EPA]."⁴⁶

19. Central Land's claims are unsupported. Commission staff fully and properly investigated the landowner's allegations of non-compliance. Further, nothing in the record demonstrates that Spire provided anything less than accurate information in its weekly reports. During construction of the Spire Project, Commission staff, itself or through a third-party compliance monitor, conducted monthly inspections of the construction right-of-way to ensure Spire's compliance with mitigation measures, the environmental conditions of the Certificate Order, and the FERC Plan and the FERC Procedures. Commission staff and its contractor prepared reports summarizing their inspection findings and documenting any instances of non-compliance and any corrective

⁴² July 3 Complaint at 3.

⁴³ *Id.* at 3-4.

⁴⁴ *See id.* at 4 (comparing Spire's statements about a forthcoming water discharge permit to the Illinois EPA's May 31, 2019 Violation Notice, which stated that Spire had failed to obtain "a General Storm Water Permit for Construction Activities").

⁴⁵ Spire's July 23, 2019 Answer (noting that it applied to the Illinois EPA "for two separate hydrostatic discharge permits; one was applied for in March 2019 and received in May 2019, and the other (the one identified in Spire's weekly reports as anticipated to be received in July 2019) was applied for in May 2019 and received on July 9, 2019").

⁴⁶ *Id.*

measures that Spire has taken to ensure compliance, and those reports are available in the Commission's public record. In addition, during project construction, Spire was required to file weekly status reports with the Commission describing the construction status of each spread, and identifying any instances of non-compliance documented by its environmental inspectors and/or by Commission staff during its inspections and the actions taken to correct instances of non-compliance.⁴⁷ Spire is currently filing monthly status reports and will continue to provide status reports until all construction and restoration work is complete.⁴⁸ As noted above, on November 14, 2019, Commission staff authorized Spire to place the project facilities into service. Before approving Spire's in-service request, Commission staff conducted field inspections which determined that Spire had adequately stabilized the construction workspaces and that restoration was proceeding satisfactorily.⁴⁹

20. As to the landowner complaints filed in the spring of 2019, the May 24 Letter Orders were the result of the investigation of the specific landowner allegations. Commission staff, through its environmental compliance monitors, conducted on-site inspections of each landowner's property and issued inspection reports, containing staff's findings, in the project docket. Environmental compliance monitors completed on-site inspections of the landowners' properties between March and May 2019. Sixteen of the May 24 Letter Orders found no need for additional corrective actions and concluded that Spire was in compliance with the environmental conditions of the Certificate Order. Three of the May 24 Letter Orders identified required corrective actions, but noted that Spire had been unable to obtain landowner permission to access off right-of-way property, which was necessary to address these landowners' non-compliance concerns (e.g., to remove erosion control devices or sediment that had migrated off the right-of-

⁴⁷ Certificate Order, 164 FERC ¶ 61,085 at Appendix, Environmental Condition 8 (requiring Spire to file updated status reports on a weekly basis until all construction and restoration activities are complete and outlining the required content of the status reports).

⁴⁸ Spire is required to file quarterly status reports for at least two years following construction. Commission staff has requested that Spire file monthly status reports given the landowner concerns regarding compliance issues during restoration. Once Spire addresses the right-of-way restoration issues that are documented in its monthly status reports, Spire will transition from filing monthly status reports to quarterly post-construction status reports for the remaining two-year period following construction. After this two-year period, quarterly reports can cease, presuming Spire documents that revegetation is successful and that all landowner concerns are addressed.

⁴⁹ Division Director's November 14, 2019 Letter Authorizing Spire to Commence Service.

way).⁵⁰ Four of the May 24 Letter Orders identified required corrective actions. A few of the letters explained that Commission staff had issued a project-wide problem area requiring Spire to address erosion and sedimentation outside of the right-of-way associated with improper water management and to identify appropriate corrective actions that Spire will take. The May 24 Letter Orders explained that Commission staff would conduct further inspections in early June 2019, and that staff would continue to review Spire's weekly status reports and other filings to ensure that Spire's environmental inspectors were appropriately inspecting construction activities, identifying compliance concerns, and ensuring that its construction crews implemented corrective actions to maintain compliance. Accordingly, the landowners' allegations of non-compliance with the environmental conditions of the Certificate Order were properly delegated to and investigated by Commission staff.

E. Violations of State Environmental Law

21. Central Land argues that Spire has violated the Certificate Order, the FERC Plan and the FERC Procedures, and the Illinois Environmental Protection Act.⁵¹ In support of this broad assertion, Central Land points only to a May 31, 2019 Violation Notice issued by the Illinois EPA.⁵²

22. As documented in Commission staff's construction inspection reports and Spire's construction status reports, Spire has been noted to have been out of compliance with the FERC Plan and the FERC Procedures in certain areas. In these instances, Spire made the necessary repairs, where allowed by the landowner, and documented the resolution in order to regain compliance with the Certificate Order.⁵³

23. Although Commission staff oversees pipeline construction and restoration activities within the limits of the construction right-of-way and authorized areas, the Commission does not have general authority to enforce compliance with state laws and

⁵⁰ See, e.g., Branch Chief's May 24, 2019 Letter Orders to Kenneth Davis, Philip and Zena Brown, and Forrest Neal Jones.

⁵¹ July 3 Complaint at 4.

⁵² *Id.* at Appendix B (providing Illinois EPA's May 31, 2019 Violation Notice).

⁵³ For example, Commission staff identified three non-compliances in its April 9-10, 2019 construction inspection report regarding ruptured filter bags and sediment outside of the right-of-way. In follow-up correspondence dated April 17, 2019, Spire reported remediation activities, per landowner approval, at these locations.

regulations.⁵⁴ The NGA authorizes the Commission to enforce the Act and any rule, regulation, or order that the Commission issues thereunder.⁵⁵ Although the Commission encourages cooperation between pipelines subject to its jurisdiction and state and local authorities, the Certificate Order does not condition clearance for the commencement of construction on pipelines having obtained all applicable state or local permits.⁵⁶

24. The violations detailed in the Illinois EPA's May 31, 2019 Violation Notice are related to state standards and regulations that are not part of the Certificate Order.⁵⁷ The Illinois EPA has actively enforced compliance with its state environmental protection law as evidenced by the May 31, 2019 Violation Notice. Specifically, we note that the Illinois EPA has actively pursued the alleged violations, which were found during its inspections of construction activities for compliance with the state water quality and effluent discharge standards, as well as compliance with other state laws and state-approved plans. Spire notified Commission staff of the May 31, 2019 Violation Notice and has continued to regularly update the Commission on its efforts to resolve the alleged

⁵⁴ *Mountain Valley*, 172 FERC ¶ 61,193 at P 24.

⁵⁵ *Id.* (citing 15 U.S.C. § 717m).

⁵⁶ *See* Certificate Order, 164 FERC ¶ 61,085 at Appendix, Environmental Condition 9 (“Spire must receive written authorization from the Director of OEP before commencing construction of any project facilities. To obtain such authorization, Spire must file with the Secretary documentation that it has received all applicable authorizations *required under federal law* (or evidence of waiver thereof).”) (emphasis added); *see also Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at n.4 (2020) (“The Certificate Order and Commission policy only require that a certificate holder have all necessary federal permits before it commences construction.”).

⁵⁷ The Illinois EPA's violation notice also asserts that Spire failed to obtain a General National Pollutant Discharge Elimination System (NPDES) Storm Water Permit for Construction Activities (ILR10). However, in the underlying FERC certificate proceeding, Spire stated that the Illinois EPA had confirmed that it recognizes that section 402 of the Clean Water Act, 33 U.S.C. §§ 1342(1)(2); 1362(24), exempts natural gas transmission facilities from the requirement of obtaining an NPDES permit and that Spire need not obtain a stormwater permit from the state. *See* Spire's October 6, 2017 Supplemental Filing at Appendix 1-C (providing Spire's August 22, 2017 electronic mail correspondence with Illinois EPA).

violations with the Illinois EPA.⁵⁸ There is no need for Commission action on these matters.

The Commission orders:

Central Land Consulting, LLC's July 3, 2019 complaint is dismissed.

By the Commission. Commissioner Glick and Commissioner Clements are concurring with a joint statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵⁸ Spire reported the receipt of the Illinois EPA's Violation Notice and that it had been consulting with the Illinois EPA on the alleged violations in its July 23, 2019 construction status report. Spire also provided updates on its coordination with the Illinois EPA in subsequent status reports dated September 5, 2019 (written response to Violation Notice) and September 17, 2019 (receipt of Illinois EPA's Intent to Pursue Legal Action). Spire continues to update Commission staff on its coordination with the Illinois EPA.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Spire STL Pipeline LLC

Docket No. CP17-40-005

(Issued January 19, 2021)

GLICK, Commissioner, and CLEMENTS, Commissioner, *concurring*:

1. We concur in today's order. We write separately to underscore that this order is not the end of the road for landowners aggrieved by what they believe to be Spire STL Pipeline LLC's (Spire) failure to adequately restore their lands. The determinations in today's order are made on the record compiled in this proceeding. Those determinations do not preclude landowners from continuing to pursue their claims before the Commission based on additional arguments or evidence that they may choose to introduce.¹ We have serious concerns about whether Spire has adequately restored the lands affected by the construction of the pipeline and will retain an open mind when reviewing any future allegations on that score.

2. On a more general level, we are troubled by the challenges arrayed against landowners as they attempt "to navigate the sometimes byzantine set of rules and regulations that can make up a FERC proceeding."² Much of today's order turns on procedural determinations regarding who should have sought rehearing, of what, and when they should have done so. And while we agree that those determinations are the correct application of the Commission's rule and regulations, the fact that we have to make them at all is a reminder that the Commission must redouble its efforts to ensure that our proceedings adequately accommodate landowners and other entities that lack the same means as pipeline developers to hire expert representation. We hope that becomes a Commission priority in the months ahead. In particular, we must prioritize establishing a robust Office of Public Participation, which will help landowners and others ensure that their voices are heard by this Commission.

For these reasons, we respectfully concur.

¹ In addition, we note that the Commission itself did not rule on the earlier complaints filed by the individual landowners, which were addressed by Commission staff via delegated authority. *See Spire STL Pipeline LLC*, 174 FERC ¶ 61,058, at P 6 (2021). No party sought rehearing of those delegated orders. *Id.*

² *See Midship Pipeline Co.*, 173 FERC ¶ 61,075 (2020) (Glick, Comm'r, concurring at P 1).

Richard Glick
Commissioner

Allison Clements
Commissioner